

Effective December 1998

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

CIRCUIT JUSTICE

Clarence Thomas Washington, D.C.

CHIEF JUDGE

Pasco M. Bowman Kansas City, Missouri

CIRCUIT JUDGES

Theodore McMillian. St. Louis, Missouri
Richard S. Arnold Little Rock, Arkansas
George G. Fagg Des Moines, Iowa
Roger L. Wollman Sioux Falls, South Dakota
C. Arlen Beam Lincoln, Nebraska
James B. Loken Minneapolis, Minnesota
David R. Hansen. Cedar Rapids, Iowa
Morris S. Arnold. Little Rock, Arkansas
Diana E. Murphy Minneapolis, Minnesota

SENIOR CIRCUIT JUDGES

Floyd R. Gibson Kansas City, Missouri
Donald P. Lay. St. Paul, Minnesota
Gerald W. Heaney. Duluth, Minnesota
Myron H. Bright Fargo, North Dakota
Donald R. Ross Omaha, Nebraska
John R. Gibson Kansas City, Missouri
Frank J. Magill. Fargo, North Dakota

CIRCUIT EXECUTIVE

Millie B. Adams St. Louis, Missouri

CLERK

Michael E. Gans. St. Louis, Missouri

PREFACE

Based on Rule 47 of the Federal Rules of Appellate Procedure (FRAP), this court adopts the Eighth Circuit Rules of Appellate Procedure (8th Cir. R.), governing appeals to the court on and after December 1, 1998.

The Eighth Circuit Rules of Appellate Procedure supplement the Federal Rules of Appellate Procedure. Counsel should be familiar with both sets of rules and the federal statutes governing appeals, particularly 28 U.S.C. §§ 1291 and 1292.

For the convenience of counsel, the Eighth Circuit Rules are numbered to correspond to the Federal Rules of Appellate Procedure.

*Revised December 1, 1998.

EIGHTH CIRCUIT RULES OF APPELLATE PROCEDURE

TABLE OF CONTENTS

TITLE I--APPLICABILITY OF RULES

	Page
FRAP 1	Scope of Rules; Title
(No local rule)	
FRAP 2	Suspension of Rules
(No local rule)	

TITLE II--APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

FRAP 3	Appeal as of Right--How Taken	
8 th Cir. R. 3A	(Reserved)	
8 th Cir. R. 3B	Appeal Information Form	1
8 th Cir. R. 3C	Dismissal for Failure to Prosecute.	1
FRAP 3.1	Appeals from a Judgment of a Magistrate Judge in a Civil Case [Abrogated]	
(No local rule)		
FRAP 4	Appeal as of Right--When Taken	
(No local rule)		
FRAP 5	Appeals by Permission	
8 th Cir. R. 5A	Appeal by Permission	1
FRAP 5.1	Appeal by Leave under 28 U.S.C. § 636(c)(5) [Abrogated]	
(No local rule)		
FRAP 6	Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel	

(No local rule)		
FRAP 7	Bond for Costs on Appeal in a Civil Case	
(No local rule)		
FRAP 8	Stay or Injunction Pending Appeal	
(No local rule)		
FRAP 9	Release in a Criminal Case	
(No local rule)		
FRAP 10	The Record on Appeal	
8 th Cir. R. 10A	Exhibits	2
FRAP 11	Forwarding the Record	
8 th Cir. R. 11A	Transmission of the Record on Appeal	2
FRAP 12	Docketing the Appeal; Filing a Representation Statement; Filing the Record	
(No local rule)		

TITLE III-REVIEW OF A DECISION OF THE UNITED STATES TAX COURT

FRAP 13	Review of A Decision of the Tax Court	
(No local rule)		
FRAP 14	Applicability of Other Rules to the Review of a Tax Court Decision	
(No local rule)		

TITLE IV-REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

FRAP 15	Review or Enforcement of an Agency Order-- How Obtained; Intervention	
(No local rule)		
FRAP 15.1	Brief and Oral Argument in a National Labor Relations Board Proceeding	
(No local rule)		

FRAP 16 (No local rule)	The Record on Review or Enforcement
FRAP 17 (No local rule)	Filing the Record
FRAP 18 (No local rule)	Stay Pending Review
FRAP 19 (No local rule)	Settlement of a Judgment Enforcing an Agency Order in Part
FRAP 20 (No local rule)	Applicability of Rules to the Review or Enforcement of an Agency Order

TITLE V-EXTRAORDINARY WRITS

FRAP 21	Writs of Mandamus and Prohibition, and Other Extraordinary Writs
8 th Cir. R. 21A	Petitions for Writs of Mandamus and Prohibition 2

TITLE VI-HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

FRAP 22	Habeas Corpus and Section 2255 Proceedings
8 th Cir. R. 22A	Death Penalty Cases. 3
8 th Cir. R. 22B	Second or Successive Habeas Corpus and Section 2255 Proceedings 4
FRAP 23 (No local rule)	Custody or Release of a Prisoner in a Habeas Corpus Proceeding
FRAP 24 (No local rule)	Proceeding in Forma Pauperis

TITLE VII-GENERAL PROVISIONS

FRAP 25	Filing and Service	
8 th Cir. R. 25A	Electronic Filing and Noticing	5
FRAP 26	Computing and Extending Time	
(No local rule)		
FRAP 26.1	Corporate Disclosure Statement	
8 th Cir. R. 26.1A	Corporate Disclosure Statement.	6
FRAP 27	Motions	
8 th Cir. R. 27A	Motions	6
8 th Cir. R. 27B	Orders	6
FRAP 28	Briefs	
8 th Cir. R. 28A	Briefs.	9
FRAP 29	Brief of an Amicus Curiae	
(No local rule)		
FRAP 30	Appendix to the Briefs	
8 th Cir. R. 30A	Designated Record on Appeal	11
FRAP 31	Serving and Filing Briefs	
(No local rule)		
FRAP 32	Form of Briefs, Appendices, and Other Papers	
(No local rule)		
FRAP 33	Appeal Conferences	
8 th Cir. R. 33A	Prehearing Conference Program	13
FRAP 34	Oral Argument	
8 th Cir. R. 34A	Screening for Oral Argument.	13
8 th Cir. R. 34B	Argument Calendar.	14
FRAP 35	En Banc Determination	
8 th Cir. R. 35A	Hearing and Rehearing En Banc	14
FRAP 36	Entry of Judgment; Notice	
(No local rule)		

FRAP 37	Interest on Judgment	
(No local rule)		
FRAP 38	Frivolous Appeal -- Damages and Costs	
(No local rule)		
FRAP 39	Costs	
8 th Cir. R. 39A	Taxation of Costs.	15
FRAP 40	Petition for Panel Rehearing	
8 th Cir. R. 40A	Petition for Rehearing by Panel	16
FRAP 41	Mandate: Contents; Issuance and Effective Date; Stay	
(No local rule)		
FRAP 42	Voluntary Dismissal	
(No local rule)		
FRAP 43	Substitution of Parties	
(No local rule)		
FRAP 44	Cases Involving a Constitutional Question When the United States is Not a Party	
(No local rule)		
FRAP 45	Clerk's Duties	
8 th Cir. R. 45A	Clerk	17
FRAP 46	Attorneys	
8 th Cir. R. 46A	Admitting, Suspending, and Disciplining Attorneys	17
8 th Cir. R. 46B	Student Practice	17
FRAP 47	Local Rules by Courts of Appeals	
8 th Cir. R. 47A	Summary Disposition	20
8 th Cir. R. 47B	Affirmance or Enforcement Without Opinion.	20
8 th Cir. R. 47C	Attorney Fees	21
8 th Cir. R. 47D	Assignment of Judges; Quorum	21
8 th Cir. R. 47E	Death or Disability of Judge	22
8 th Cir. R. 47F	Court Libraries.	22
8 th Cir. R. 47G	Ban on Practice of Law; Postemployment Restriction.	22
8 th Cir. R. 47H	Attorney Admission Fee Fund.	22
FRAP 48	Masters	
(No local rule)		

RULE 3B: APPEAL INFORMATION FORM

In all civil cases except those brought under 28 U.S.C. §§ 2241, 2254, or 2255, the appellant must complete an Appeal Information Form (Form A), submit it with the notice of appeal to the clerk of the district court, and serve a copy on the appellee. The appellee may file and serve a supplemental statement (Form B) within three days after receiving service of Form A. Copies of Forms A and B may be obtained from the clerk of this court or from the clerks of the district courts.

Cross-References: FRAP 3, 4, 26(b);
FRAP Appendix, Form 1 (Notice of Appeal);
8th Cir. R. 33A.

RULE 3C: DISMISSAL FOR FAILURE TO PROSECUTE

If an applicant fails to comply with the Federal Rules of Appellate Procedure or these rules, the clerk will notify the appellant and appellant's counsel that the appeal will be dismissed for want of prosecution unless appellant remedies the default within 15 days after the clerk issues the notice. If the appellant fails to comply within the 15-day period, the clerk will enter an order dismissing the appeal for want of prosecution and issue a certified copy of the order as the mandate to the clerk of the district court. After the appeal has been dismissed under this rule, there is no remedy for default except by order of the court. The dismissal of an appeal will not limit the court's authority to take disciplinary action against defaulting counsel in appropriate cases.

Cross-Reference: FRAP 3(a)(2).

RULE 5A: APPEAL BY PERMISSION

Page limitation: Neither the petition nor the answer may exceed 25 typewritten or printed pages, except for good cause and with permission of the court. The

petition and answer must comply with FRAP 32(a)(4), (5), and (6).

RULE 10A: EXHIBITS

(a) **Duty of Appellant.** Subject to subparagraph (b) of 8th Cir. R. 10A, appellant must ensure that all trial exhibits, or copies thereof, are submitted to the clerk of the court of appeals no later than the filing of appellant's opening brief. If trial exhibits were retained by the district court, appellant must request the clerk of the district court to forward those exhibits to the clerk of the court of appeals. If trial exhibits were not retained by the district court, appellant must prepare and submit a separate appendix containing all trial exhibits, or copies thereof. In pro se cases, the district court will transmit the exhibits, and no separate appendix of exhibits is required. See 8th Cir. R. 30A(a)(2).

(b) **Physical Exhibits.** Physical exhibits should not be filed with the clerk of this court unless they are referred to in the brief and examination of the exhibits would aid the court in resolving an issue raised on appeal. Counsel should contact the clerk before submitting unusually bulky or large physical exhibits. In a criminal case, evidence such as firearms and drugs may be filed only with leave of court.

RULE 11A: TRANSMISSION OF THE RECORD ON APPEAL

A certified copy of all docket entries in the proceeding below must be transmitted to the court in place of the entire record. See FRAP 11(e). The appellant's brief is due 40 days after filing of the docket entries. See FRAP 31(a)(1).

Cross-References: FRAP 11(e), 30, 31(a);
8th Cir. R. 30A.

RULE 21A: PETITIONS FOR WRITS OF MANDAMUS AND PROHIBITION

Within 15 days after the filing of the petition or as the court orders, the court must either dismiss the petition or direct that an answer be filed.

Cross-Reference: FRAP 21.

RULE 22A: DEATH PENALTY CASES

(a) **Notice to the Clerk.** The state attorney general or United States attorney must notify the clerk of the court promptly by telephone or fax when a warrant for execution is issued. The notice should provide the name of the prisoner and the time and date of the scheduled execution. Upon receipt of the notice, the clerk will contact counsel for the inmate to determine the inmate's plan for litigation.

(b) **Emergency Nature of the Proceedings.** The clerk will treat all pleadings filed after the issuance of a warrant for execution as emergency matters and will require the parties to the litigation to file all pleadings with the court and to serve each other by facsimile. Where the length or nature of the documents makes facsimile filing impractical, the documents must be filed with the clerk and served on opposing counsel by overnight delivery service. If hand-delivery of documents would be quicker or more practical than facsimile or overnight-delivery, counsel may file or serve documents by hand-delivery. Counsel should contact the clerk for facsimile authorization and must provide the clerk with their facsimile numbers and home and other telephone numbers where they may be reached after regular business hours. The clerk will maintain business hours as may be required to facilitate the court's consideration of the proceedings.

(c) **Required Information.** In an application for second or successive habeas relief, the prisoner must provide the following information:

- (1) the grounds for relief;
- (2) a list of all pending litigation in federal or state court;
- (3) the captions and case numbers of all previous habeas proceedings, including appeals to this court and certiorari petitions to the United States Supreme Court, and citations to any published state or federal court opinions;
- (4) the outcome of all previous habeas petitions, including whether any prior petition was dismissed without prejudice or for failure to exhaust

state remedies; and

(5) copies of all state or federal court opinions or judgments relating to the conviction and sentence.

(d) **Motions for Stay.** A motion for a stay of execution should be prepared as a separate document and should be filed simultaneously with the application for second or successive habeas relief.

(e) **Responses and Replies.** Upon receipt of an application for a second or successive habeas or a motion for stay of execution, the clerk will contact the state attorney general or the United States attorney and set a deadline for a response to the application or motion. If counsel for the petitioner wishes to file a reply, counsel should contact the clerk and obtain a filing deadline.

(f) **Other Challenges to an Execution.** Within twenty-four hours of its filing in United States district court, the petitioner must provide the clerk with a copy of any complaint in any civil action which challenges or seeks to stay the execution. Respondent and petitioner must promptly furnish the clerk with all subsequent pleadings in the matter, and petitioner must promptly notify the clerk of any opinion or dispositive order in the matter.

Cross-Reference: FRAP 22.

RULE 22B: SECOND OR SUCCESSIVE HABEAS CORPUS AND SECTION 2255 PROCEEDINGS

(a) In any application for second or successive habeas corpus relief or for second or successive motion under 28 U.S.C. § 2255 which is filed in this court, the petitioner or movant must provide the following information:

(1) the grounds for relief;

(2) if available, the filing dates, captions, docket numbers, and courts where all prior habeas proceedings or section 2255 motions and appeals were filed; and

(3) the outcome of all former habeas proceedings or section 2255 motions and appeals, including whether any prior petition was dismissed without

prejudice or for failure to exhaust state remedies.

(b) The clerk will serve a copy of the application for second or successive habeas petition or section 2255 motion on the appropriate state attorney general or United States attorney.

(c) The state attorney general or United States attorney must file a response within 15 days of receipt of the application for second or successive habeas petition or section 2255 motion. The response must include:

(1) a brief response to the grounds for relief stated by petitioner or movant;

(2) information petitioner or movant has not supplied under Rule 22B(a)(2) and (3) of these local rules; and

(3) copies of orders and memorandum opinions in all former habeas proceedings and section 2255 motions filed by petitioner or movant.

RULE 25A: ELECTRONIC FILING AND NOTICING

(a) **Electronic Filing.** In cases or classes of cases as the clerk of court may select, the clerk is authorized to allow or to require any moving party to file a required document electronically. The electronic image of the document will constitute the original document for all court purposes. Filing is complete when the document is received in the clerk's database.

To each document filed electronically, the filer must add a certificate verifying that the original was signed by the attorney or party shown as the filer. The original signed document must be maintained by the filer for a period not less than the maximum allowable time to complete the appellate process. Upon request, the original document must be provided to other parties or to the court.

The clerk may allow a district court clerk to transmit the notice of appeal and other required docketing documents electronically. Receipt of these documents is complete for filing purposes when they are received in the clerk's database.

The clerk may require paper copies of any document filed electronically.

(b) **Electronic Noticing.** In cases or classes of cases as the clerk of court may select, the clerk is authorized to serve all papers on counsel of record

electronically. Counsel who agree to accept electronic notice must agree that the electronic notice will be the only notice provided by the clerk.

Cross Reference: FRAP 25(a)(2)(D).

RULE 26.1A: CORPORATE DISCLOSURE STATEMENT

(a) The Corporate Disclosure Statement must be filed within ten days after receipt of notice that the appeal has been docketed in this court.

(b) Parties must file five copies of the statement.

Cross-Reference: FRAP 26.1.

RULE 27A: MOTIONS

(a) **Number.** Movant must file the original and one copy of any motion the clerk may grant under 8th Cir. R. 27B(a). In all other cases, the movant must file the original and three copies of the motion.

(b) **Form.** All motions must comply with FRAP 32(c)(2).

Cross-References: FRAP 25 (filing and service), 26 (computation of time), 27, 32(b).

RULE 27B: ORDERS

(a) **Orders the Clerk May Grant.** The clerk has discretion to enter orders on behalf of the court in procedural matters including, but not limited to:

- (1) applications to file briefs exceeding the page limits set forth in these rules and the Federal Rules of Appellate Procedure;
- (2) extensions of time for filing briefs and records;
- (3) extensions of time for designating the record under 8th Cir. R. 30A(b);
- (4) authorization to proceed on a deferred appendix under 8th Cir. R. 30A(b)(2);
- (5) corrections in briefs, pleadings, or the record;
- (6) supplementation of the record;
- (7) incorporation of records from former appeals;
- (8) consolidation of appeals;
- (9) substitution of parties;
- (10) motions to appear as amicus curiae;
- (11) requests by amicus curiae counsel to participate in oral argument by sharing time with other counsel;
- (12) advancement or continuance of cases;
- (13) appointment of counsel on appeal in cases prosecuted under the Criminal Justice Act;
- (14) withdrawal of appearance in civil cases;
- (15) extensions of time to file petitions for rehearing not to exceed 14 days;
- (16) transmission of records to the Supreme Court for use in connection with petitions for writs of certiorari;
- (17) entry of consent decrees in National Labor Relations Board cases and other governmental agency review cases; and
- (18) taxation of costs under 28 U.S.C. § 1920.

If any party opposes the action requested in any of the above matters or seeks reconsideration of an order entered under this section, the clerk must submit the matter for a ruling by a judge of this court.

(b) Orders One Judge May Grant. Subject to FRAP 27(c), one judge of the court may determine any motion and exercise any power including:

- (1) granting leave to appeal in forma pauperis and ordering preparation of a transcript at government expense;
- (2) granting a certificate of appealability;
- (3) granting appointment of counsel for an indigent defendant proceeding under 28 U.S.C. § 1915;
- (4) denying a motion to dismiss under 8th Cir. R. 47A; and
- (5) ordering a temporary stay of any proceeding pending the court's determination of a stay application.

(c) Orders Two Judges May Grant. Any two judges of the court may:

- (1) deny leave to appeal in forma pauperis;
- (2) deny a certificate of appealability;
- (3) deny appointment of counsel in indigent cases; and
- (4) deny or grant bond pending appeal.

(d) All Other Matters. A panel of three judges will act in all other matters.

(e) Reconsideration of Orders. Any party adversely affected by an order issued under subdivisions (b), (c), or (d) may file a motion to reconsider, vacate, or modify the order within ten days after its entry. The motion will be referred to a three-judge panel that includes all judges who previously acted on the matter.

Cross-Reference: FRAP 27.

RULE 28A: BRIEFS

(a) **Number.** Five copies of briefs prepared pro se must be filed. Ten copies must be filed with the court in all cases handled by an attorney. Eleven additional copies must be filed in cases heard en banc. In every case, two copies of each brief must be served on counsel for each party separately represented.

A party proceeding in forma pauperis who chooses to file typewritten and carbon copies of the brief must file the original and three legible copies with the clerk and must serve one legible copy on counsel for each party separately represented. *See* FRAP 31(b).

(b) Addendum.

(1) **CONTENTS.** Appellant must prepare an addendum and file it with the opening brief. The addendum must include:

(i) a copy of the district court or administrative agency opinion or order including supporting memoranda or findings;

(ii) any magistrate's report and recommendation that preceded the district court opinion or order;

(iii) short excerpts from the record, other than from the transcript of testimony, that would be helpful in reading the brief without immediate reference to the appendix; and

(iv) other relevant rulings of the district court.

(2) **LENGTH.** The addendum must not exceed 15 pages excluding the district court or agency opinion and the magistrate's report and recommendation. The addendum will normally be incorporated into the back of the brief, but may be bound separately if it includes a long district court opinion or report and recommendation. If bound separately, the appellant must file the same number of addenda as briefs.

(3) **APPELLEE'S ADDENDUM.** The appellee's brief may include an addendum not to exceed 15 pages.

(c) **Certification of Word Processing Program.** In addition to the information required by FRAP 32(a)(7)(C), the certificate of compliance must also include the name and version of the word processing software used to prepare the brief.

(d) **Computer Diskettes.** For all briefs prepared on a computer, the filing party must also provide the clerk with a 3 1/2 inch computer diskette containing the full text of the brief. The label on the diskette must include the case name and the docket number. One copy of the diskette must be served on each party separately represented by counsel. The filing party must certify that the diskette has been scanned for viruses and that it is virus-free.

(e) **Briefing Schedule in Cross-Appeals; Length of Briefs in Cross-Appeals.**

(1) SCHEDULE FOR FILING. In cases presenting a cross-appeal, the appellee/cross-appellant's opening brief must be filed as one brief within 30 days after service of appellant's brief. Appellant's reply/cross-appellee brief must be filed as one brief within 30 days after service of cross-appellant's brief. Cross-appellant's reply brief must be filed within 14 days after service of appellant/cross-appellee's brief.

(2) LENGTH OF BRIEFS IN CROSS-APPEALS. The appellant's opening brief and the combined appellee/cross-appellant's opening brief are governed by the length provisions of FRAP 32(a)(7)(A) and (B). An appellant's reply/cross-appellee brief may not exceed 25 pages. If prepared in compliance with FRAP 32(a)(7)(B), the brief may not exceed 10,000 words or 1000 lines. The length of a cross-appellant's reply brief is governed by FRAP 32(a)(7)(A) and (B).

(f) **Contents.**

(1) SUMMARY OF THE CASE. Each appellant must file a statement not to exceed one page providing a summary of the case, the reasons why oral argument should or should not be heard, and the amount of time (15, 20, or 30 minutes, or in an extraordinary case, more than 30 minutes) necessary to present the argument. The summary must be placed as the first item in the brief. If appellee deems appellant's statement incorrect or incomplete, appellee may include a responsive statement in appellee's brief.

(2) STATEMENT OF ISSUES. In addition to the requirement of FRAP 28(a)(5), the statement of issues shall include for each issue a list of the most apposite cases, not to exceed four, and the most apposite constitutional and statutory provisions.

(h) **Incorporation by Reference.** A party may not incorporate by reference the contents of a brief filed elsewhere.

(i) **Citation of Unpublished Opinion.** Unpublished opinions are not precedent and parties generally should not cite them. When relevant to establishing the doctrines of res judicata, collateral estoppel, or the law of the case, however, the parties may cite any unpublished opinion. Parties may also cite an unpublished opinion of this court if the opinion has persuasive value on a material issue and no published opinion of this or another court would serve as well. A party who cites an unpublished opinion in a document must attach a copy of the unpublished opinion to the document. A party who cites an unpublished opinion for the first time at oral argument must attach a copy of the unpublished opinion to the supplemental authority letter required by FRAP 28(j). When citing an unpublished opinion, a party must indicate the opinion's unpublished status.

Cross-References: FRAP 25 (filing and service), 26 (computation of time), 28, 29, 31, 32.

RULE 30A: DESIGNATED RECORD ON APPEAL

(a) Scope.

(1) **SOCIAL SECURITY APPEALS.** Three copies of the administrative agency record must be filed in social security cases.

(2) **PRO SE APPEALS.** In all pro se appeals, the entire district court record is available for review. The clerk of the district court must transmit the original record, including all documentary exhibits, to the clerk of this court with two copies of the notice of appeal and two certified copies of the district court docket entries.

(b) Methods of Preparing the Record on Appeal.

(1) **AGREED STATEMENT AS THE RECORD ON APPEAL.** *See* FRAP 10(d).

(2) **JOINT APPENDIX.** *See* FRAP 30(a) & (b). Appellant must file three copies of the appendix with the brief.

(3) **SEPARATE APPENDICES.** Appellants may dispense with the process of preparing a joint appendix as set forth in FRAP 30(a) and (b) and submit a separate appendix with the opening brief. Appellant must

notify the clerk and all opposing parties in writing of the decision to prepare and file a separate appendix within 14 days after filing the notice of appeal. Appellant must also order the transcript according to FRAP 10(b).

Appellees may file a separate appendix containing material not included in the appellant's appendix. Appellee must refer to record material found in appellant's separate appendix rather than duplicating the material.

Separate appendices must conform to FRAP 32(b) and must be fully indexed and consecutively paginated. Each party must file three copies of its separate appendix with its brief.

(4) SUPPLEMENTAL APPENDIX. If the parties conclude after the opening briefs have been filed that relevant material has been omitted from the joint appendix, they may agree to file a supplemental appendix. In the absence of agreement, either party may move this court to direct the clerk of the district court to transmit additional portions of the record.

In rendering judgment on appeal, this court may rely on any portion of the original record of the district court or the agency proceedings including portions not included in the designated record.

(c) **Costs.** The prevailing party may recover in this court the costs of reproducing the required number of copies of the appendix. Costs for producing the transcript may be recovered in the district court.

Unless the parties agree otherwise, the appellant must pay the cost of producing the joint appendix. The appellee, however, must advance to the appellant the cost of including parts of the record designated by appellee that the appellant deems unnecessary to determine the issues on appeal. If appellee prevails on appeal, the costs the appellee has advanced are recoverable. The cost of appellee's separate appendix is also recoverable.

The court will deny costs to parties who have caused unnecessary material to be inserted into the record. Any attorney who multiplies the proceedings in a case unreasonably and vexatiously may be held personally responsible by the court for excess costs according to 28 U.S.C. § 1927 and may be subject to disciplinary sanctions.

Cross-References: FRAP 10, 11, 25 (filing and service), 26 (computation of time), 28, 30, 32; 8th Cir. R. 11A; 28 U.S.C. § 1927.

RULE 33A: PREHEARING CONFERENCE PROGRAM

(a) **Scope of Program.** In any civil appeal included in the court's prehearing conference program, a conference will be held promptly to review, limit, or clarify the issues on appeal, to discuss settlement, and to consider any other matter relating to the appeal. This program does not apply to: petitions for postconviction relief, social security cases; cases dismissed below for lack of jurisdiction; interlocutory appeals certified under 28 U.S.C. § 1292(b); cases appealed under 28 U.S.C. § 1292(a)(1) and federal income tax cases.

(b) **Proceedings.** The conference will be conducted by the director of the prehearing conference program, or by a senior district judge on special assignment from the chief judge, at a site convenient to the parties. Conferences usually will be held in St. Louis, Missouri; St. Paul, Minnesota; or Little Rock, Arkansas.

(c) **Confidentiality.** Settlement-related material and settlement negotiations must be maintained in confidence by the director of the prehearing conference program or the senior district judge who conducts the conference. A judge who considers the appeal on its merits does not have access to settlement material, except as agreed by the parties.

Cross-Reference: FRAP 33.

RULE 34A: SCREENING FOR ORAL ARGUMENT

(a) **Assignment of Screening Function.** The chief judge may appoint the clerk, the senior staff attorney, or a panel or panels of judges of the court to screen cases awaiting disposition.

(b) **Screening Categories.** Cases may be screened for disposition without oral

argument, for abbreviated argument, or for full argument. Cases screened for full oral argument usually will be allotted 15 or 20 minutes per side. Extended argument of 30 minutes or more per side occasionally will be allotted.

(c) **Reclassification by Hearing Panel.** The panel assigned to dispose of a case may alter time allocations for oral argument or reclassify the case as suitable for disposition without oral argument.

(d) **Disposition Without Oral Argument.** The clerk will notify the parties when a case has been classified as suitable for disposition without argument. Any party may ask the court to reconsider the case for oral argument by filing a written request for reclassification within five days after receiving notice.

(e) **Calendar Designation.** The clerk will indicate on the calendar the time allocated for argument of each case.

Cross-Reference: FRAP 34.

RULE 34B: ARGUMENT CALENDAR

Companion Cases. By order of the court, two or more cases raising similar questions may be heard together. Counsel must inform the court if they know of pending cases that raise similar questions.

Cross-References: FRAP 34, 45(b).

RULE 35A: HEARING AND REHEARING EN BANC

Petition for En Banc Disposition. A petition must not refer to or adopt by reference any matter from other briefs or motions in the case.

(1) **NUMBER.** A party seeking an en banc proceeding must file 21 copies of a petition for hearing or rehearing en banc.

(2) **FRIVOLOUS PETITIONS; COSTS ASSESSED.** The court may assess costs against counsel who files a frivolous petition for rehearing en banc deemed to have multiplied the proceedings in the case and to have increased costs unreasonably and vexatiously. At the court's order, counsel personally may be required to pay those costs to the opposing party. *See* 28 U.S.C. § 1927.

Cross-References: FRAP 35; 8th Cir. R. 40A(b).

RULE 39A: TAXATION OF COSTS

(a) **Taxation of Reproduction Costs.** The cost of printing or otherwise reproducing necessary copies of briefs, separate addenda, and appendices must be taxable as follows:

- (1) **BRIEFS.** Unless the court has directed the parties to file a greater number of briefs, the clerk will allow taxation of costs for only ten copies of each brief, plus two copies for each party.
- (2) **SEPARATE ADDENDA.** Unless the court has directed the parties to file a greater number of separate addenda, the clerk will allow taxation of costs for only ten copies of each separate addendum prepared under 8th Cir. R. 28A(b)(2), plus two copies for each party.
- (3) **APPENDICES.** Unless the court has directed the parties to file a greater number of appendices, the clerk will allow taxation of costs for only three copies of each appendix, plus one copy for each party.
- (4) **REPRODUCTION COSTS.** The clerk will tax reproduction costs, regardless of reproduction method, at the following rate:

Reproduction per page per copy	\$.15
Binding per brief, separate addendum, or appendix	\$2.00
Cover per brief, separate addendum, or appendix	\$2.00
Sales tax (if any)	at the applicable rate

(5) **OTHER COSTS.** The clerk will not allow taxation of other costs associated with preparation of the brief or appendix. Parties cannot recover costs for overnight or special delivery.

(b) **Filing Date.** The prevailing party may file a bill of costs within 14 days after the entry of judgment. Untimely bills will be denied unless a motion showing good cause is filed with the bill. The losing party must file any objections to the bill of costs within ten days after being served. If a party files a motion showing good cause, the clerk may grant a seven day extension for filing either the bill of costs or the objections.

(c) **Support for Bill of Costs.** The bill of costs must be itemized and verified. Any receipts must be attached as exhibits to the bill of costs.

Cross-References: FRAP 39(c), (d).

RULE 40A: PETITION FOR REHEARING BY PANEL

(a) **Number.** A party must file five copies of a petition for rehearing.

(b) **Treated as Petition for Rehearing En Banc.** On the request of any judge on the panel, a petition for rehearing by a panel will be treated as a petition for rehearing en banc. Every petition for rehearing en banc, however, will automatically be deemed to include a petition for rehearing by the panel.

(c) **Successive Petitions.** Successive petitions for rehearing are not allowed. The clerk will accept for filing only one petition for rehearing from any party to an appeal and will not accept any motion to reconsider the court's ruling on a petition for rehearing or rehearing en banc.

Cross-References: FRAP 27, 32(b), 35, 40; 8th Cir. R. 27A.

RULE 45A: CLERK

Clerk to Furnish Copies. When an opinion is filed, the clerk will mail a copy to counsel for each of the parties. Additional copies of an opinion will be available from the clerk for \$5.00 each. Annual subscriptions to all published opinions of the court will be available at a rate set by the court.

Cross-Reference: FRAP 45.

RULE 46A: ADMITTING, SUSPENDING, AND DISCIPLINING ATTORNEYS

Applicants for admission must pay an admission fee of \$40.00, for deposit in the Attorney Admission Fee Fund. An attorney who is appointed to represent a party proceeding in forma pauperis may appear in the case without being admitted to the bar of this court.

Cross-References: FRAP 46; 8th Cir. R. 47H.

RULE 46B: STUDENT PRACTICE

Any law student acting under a supervising attorney may appear and participate in proceedings in this court.

(a) **Eligibility.** To be eligible to appear and participate, a law student must:

- (1) be a student in good standing in a law school approved by the American Bar Association;
- (2) have completed legal studies equivalent to three semesters;
- (3) file with the clerk of court:
 - (i) a certificate from the dean of the law school or a faculty

member stating the student is of good moral character, satisfies the requirements listed above, and is qualified to serve as a legal intern;

(ii) a certificate stating the student has read and agrees to abide by the rules of the court, all applicable codes of professional responsibility, and other relevant federal practice rules;

(iii) a notice of appearance prescribed by the court and signed by the supervising attorney and the client in each case in which the student is participating or appearing as a law student intern; and

(4) be introduced to the court by an attorney admitted to practice in this court.

(b) **Restrictions.** No law student admitted under these rules may:

(1) request or receive compensation from the client;

(2) appear in court without the supervising attorney; or

(3) file any documents or papers with the court that have not been read, approved, and signed by the supervising attorney and cosigned by the student.

This restriction does not prevent the supervising attorney, law school, public defender, or government from paying compensation to the law student, or an agency from charging for its services.

(c) **Supervising Attorneys.** A person acting as a supervising attorney under this rule must be admitted to practice in this court and must:

(1) assume responsibility for the conduct of the student;

(2) read and sign pleadings, papers, and documents prepared by the student;

(3) advise the court of the student's participation, be present with the student at all times in court, and be prepared to supplement the student's oral or written work as the court requests or as necessary to ensure the client's proper representation; and

(4) be available to consult with the client.

(d) **Special Notice of Appearance to be filed by law student:**

SPECIAL NOTICE OF APPEARANCE

Supervising Attorney and Law Student

Title of Action

Case Docket No.

Please be advised that [name of supervising attorney] appears as attorney for [name of client] and is acting as supervising attorney for [name of law student], a law student who satisfies the requirements for student practice under 8th Cir. R. 46B.

The supervising attorney and the law student have read and agree to abide by 8th Cir. R. 46B governing student practice.

Supervising Attorney Date

Law Student Date

Address and Phone

Address and Phone

Law School Name and Address

Client Consent

I authorize [name of law student], who is being supervised by my attorney, [name of attorney], to appear in court and other proceedings on my behalf and to prepare documents on my behalf. My attorney must be present when the law student appears in court.

Client Date

Address

RULE 47A: SUMMARY DISPOSITION

(a) **On Motion of Court.** The court on its own motion may summarily dispose of any appeal without notice. However, in an in forma pauperis appeal in which a certificate of appealability has been issued, the court will afford 15 days' notice before entering summary disposition if the briefs have not been filed.

The court will dismiss the appeal if it is not within the court's jurisdiction or is frivolous and entirely without merit. The court may affirm or reverse when the questions presented do not require further consideration.

(b) **On Motion of Parties.** The appellee may file a motion to dismiss a docketed appeal on the ground the appeal is not within the court's jurisdiction. Except for good cause or on the motion of the court, a motion to dismiss based on jurisdiction must be filed within 15 days after the court has docketed the appeal.

On expiration of the time allowed for filing or express waiver of the right to file a response, or on receipt of the response, the clerk will distribute to the court the briefs filed, the record on appeal, and the motion and response. The court will consider the motion and enter an appropriate order.

Except as the court orders, the filing of a motion to dismiss does not toll the time limitations set forth in the Federal Rules of Appellate Procedure or these rules.

RULE 47B: AFFIRMANCE OR ENFORCEMENT WITHOUT OPINION

A judgment or order appealed may be affirmed or enforced without opinion if the court determines an opinion would have no precedential value and any of the following circumstances disposes of the matter submitted to the court for decision:

- (1) a judgment of the district court is based on findings of fact that are not clearly erroneous;
- (2) the evidence in support of a jury verdict is not insufficient;
- (3) the order of an administrative agency is supported by substantial evidence on the record as a whole; or

(4) no error of law appears.

The court in its discretion, with or without further explanation, may enter either of the following orders: "AFFIRMED. *See* 8th Cir. R. 47B"; or "ENFORCED. *See* 8th Cir. R. 47B."

RULE 47C: ATTORNEY FEES

(a) **Motion for Fees.** A motion for attorney fees, with proof of service, must be filed with the clerk within 14 days after the entry of judgment. The party against whom an award of fees is sought must file objections to an allowance of fees within ten days after service. The court may grant on its own motion an allowance of reasonable attorney fees to a prevailing party.

(b) **Determination of Fees.** On the court's own motion or at the request of the prevailing party, a motion for attorney fees may be remanded to the district court or administrative agency for appropriate hearing and determination.

(c) **Mandate.** The clerk will prepare and certify an award of attorney fees granted by the court for insertion in the mandate. Issuance of a mandate will not be delayed for an award of attorney fees. If a mandate issues before final determination of a motion for attorney fees, the clerk of the district court, on the request of the clerk of this court, will add the award and its amendments to the mandate.

RULE 47D: ASSIGNMENT OF JUDGES; QUORUM

(a) **Assignment of Judges; Quorum.** According to 28 U.S.C. § 46, the judges of the court of appeals sit as the court directs. Unless a hearing or rehearing before the court en banc is ordered as provided by FRAP 35, a panel of not more than three judges will hear and determine all cases.

(b) **Quorum; Absence of Quorum.** A majority of the judges comprising the court constitutes a quorum. If less than a quorum is present on any day of the term, any judge in attendance may adjourn the court until a later time or, if no judge is present, the clerk may adjourn the court.

RULE 47E: DEATH OR DISABILITY OF JUDGE

If a judge sitting on a panel that has heard argument or taken under submission any appeal, petition, or motion becomes unable to consider the matter further because of death, illness, resignation, or incapacity, or is relieved of the case at the judge's request, the remaining two judges will determine the matter. Either remaining judge may, however, request the designation of a third judge. If either judge requests a designation or if the two judges do not agree on the matter, the chief judge will designate another circuit judge to sit in place of the judge who no longer serves on the panel. The clerk will advise the parties of a designation, but no further argument or additional briefs will be received unless the court orders otherwise.

RULE 47F: COURT LIBRARIES

The court's libraries are open to members of the Eighth Circuit bar, the United States Attorneys of the circuit and their assistants, other government law officers, and with permission, other public users. Only court personnel may remove books from the buildings where libraries are maintained.

RULE 47G: BAN ON PRACTICE OF LAW; POSTEMPLOYMENT RESTRICTION

No one employed as a staff attorney to the court, as a chambers attorney to a member of the court, or in any other capacity with the court, may engage in the practice of law while employed by the court. An employee must not participate in any way as an attorney in any case pending in the court during the employee's term of service, or appear at counsel table or on brief in any case for a period of one year after leaving court employment.

RULE 47H: ATTORNEY ADMISSION FEE FUND

(a) **Use of Fund.** The court will maintain an Attorney Admission Fee Fund to receive admission fees and other funds not required to be deposited in the Treasury of the United States. The fund may be used for:

- (1) expenditures related to attorney admission proceedings;
- (2) continuing legal education programs involving bench and bar;

(3) publication of rules, procedures, and plans of the court of appeals, the judicial council, or federal advisory committee for distribution to the bar;

(4) expenditures relating to the court's libraries;

(5) reimbursement of reasonable out-of-pocket expenses incurred by court-appointed attorneys representing indigents in civil cases not covered by the Criminal Justice Act; and

(6) any other purpose set out in the guidelines prepared by the Attorney Admission Fee Fund Committee and adopted by the court of appeals on July 2, 1985.

(b) **Custodian of Fund.** The circuit executive will serve as custodian of the Attorney Admission Fee Fund. As custodian, the circuit executive will make expenditures from this fund as directed by the Attorney Admission Fee Fund Committee and the chief judge, will keep an account of the receipts and disbursements of the Fund for examination and approval by the Committee, and will give bonds as the Committee may require.